

## BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

|   |   |
|---|---|
| <b>From: Head of Environment</b>  | <b>Report Number: P49</b>                                       |
| <b>To: Licensing Act 2003 Committee (MSDC)<br/>Licensing Act 2003 Committee (BDC)</b> | <b>Date of meeting: 12 September 2014<br/>19 September 2014</b> |

### LICENSING ACT 2003 AMENDMENTS VIA THE POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011: LICENSING AUTHORITY DELEGATION AS A RESPONSIBLE AUTHORITY

#### 1. Purpose of Report

- 1.1 To seek appropriate delegations for officers to perform the relevant role of responsible authority on behalf of the Licensing Authority.
- 1.2 To seek approval of a protocol (attached as Appendix A) to guide on the undertaking of these duties and the separation of roles necessary within the licensing process.

#### 2. Recommendations

- 2.1 That the Corporate Manager (Licensing) and the Senior Licensing Officer individually be delegated the authority to perform the responsible authority role on behalf of Mid Suffolk District Council and Babergh District Council. In the absence of the Corporate Manager (Licensing) and the Senior Licensing Officer this role shall be performed by an appropriate Licensing Officer after consultation with the Head of Environment and/or a legal representative of the Councils.
- 2.2 That the Protocol for the Licensing Authority acting as a Responsible Authority under the Licensing Act 2003, attached as Appendix A, to guide on how the roles shall be performed and properly separated be approved.
- 2.3 That an appropriate recommendation be made, if necessary, to the full Council meetings of Mid Suffolk and Babergh to enable the Monitoring Officer to update any relevant sections of the Councils' Constitutions.

The Committee is able to resolve 2.1 and 2.2 above and make a suitable recommendation to Council with regard to 2.3.

#### 3. Financial Implications

- 3.1 Failure to correctly delegate responsibility and separate the roles of officials acting on behalf of the Licensing Authorities may increase the risk of legal challenge to the Authorities.

#### 4. Risk Management

4.1 Key risks are set out below:

| Risk Description   | Likelihood | Impact   | Mitigation Measures  |
|--|------------|----------|--|
| Failure to correctly authorise officers and adopt a protocol may put the Council at unnecessary risk of challenge. | Very high  | Critical | Resolve appropriate delegations and adopt a suitable and sufficient protocol to guide and support the relevant roles/duties. |

#### 5. Consultations

5.1 The issues referred to in this report and accompanying protocol have been reviewed by the Councils' Legal Section.

#### 6. Equality Analysis

6.1 There are no equality analysis impacts arising directly from the matters contained within this report.

#### 7. Shared Service / Partnership Implications

7.1 The single licensing team serves both Babergh District Council and Mid Suffolk District Council. It is proposed that the delegation and protocol will apply to both Licensing Authorities.

#### 8. Key Information

8.1 All licensing functions under the Licensing Act 2003 must be discharged by the Licensing Committee save for policy determination. A Licensing Committee may, subject to exclusions specified by Section 10(4) of the Licensing Act 2003, delegate functions to officers of the Licensing Authority.

8.2 The Police Reform and Social Responsibility Act 2011 which amended the Licensing Act 2003 on 25 April 2012, to designate Local Authorities as 'Responsible Authorities' in their own right. This is similar to the framework that already exists under the Gambling Act 2005 and is a role envisaged for officials of the Licensing Authority, rather than elected Members - whom already have a role in the decision making process and a separate right to raise representations, added previously by the Policing and Crime Act 2009.

8.3 These reforms in 2012 enable an officer of the Licensing Authority to directly raise representations in the same way as the Police, Environmental Health, Trading Standards, Fire Service and the local Planning Authority have done since the Licensing Act 2003 became effective in 2005. This provision also applies to the review of a licence or certificate on issue. The amendment to the 2003 Act also included the Primary Care Trust (PCT) who were also designated as a responsible authority in respect of applications made under the 2003 Act (a role that has now been delegated on to the Director of Public Health).

- 8.4 The increased role for the Licensing Authority will serve to further promote the licensing objectives by better utilising the expertise and local knowledge of Licensing Officers. It enables a direct right of relevant representation, without the need to wait for another party to act upon issues relevant to promotion of the licensing objectives, or the right to instigate the review of a licence or certificate should early intervention be needed. This will assist in various ways including in representing the views of communities, who may be reluctant to engage in certain circumstances, sharing good practice, supporting local initiatives and integrating strategies priorities where these are linked to promotion of the licensing objectives.
- 8.5 It is however expected that a delegated Licensing Officer will only raise relevant representations in exceptional circumstances. This may be where another party has failed to act or there may be a delay that may compromise promotion of the licensing objectives. This may, for example, be a responsive power if there were a serious incident at a licensed venue (for example overcrowding incident) or a proactive intervention with the licensing of a large outdoor temporary event where there may be serious public safety concerns.
- 8.6 The role for the Licensing Authority as responsible authority will also aid the pre-application formative discussions with some licence applicants and also help to achieve balanced outcomes via closer links to the Safety Advisory Group (SAG), Night Time Economy Core Group and Safer Neighbourhood Team (SNT) duties now performed by Licensing Officers from the joint licensing team.
- 8.7 This responsibility is challenging for smaller Licensing Authorities, such as Babergh and Mid Suffolk, as for reasons of procedural fairness the officer raising representations would then be excluded from any part of the relevant application, any discussions with other team members over the merits of the application, committee preparation, discussions with Licensing Committee members in relation to the application in question or hearing presentation and would only be involved at the hearing as a 'responsible authority'.
- 8.8 In view of the integration of the Licensing Service for Babergh and Mid Suffolk it is proposed that to achieve transparency, consistency and build sufficient resilience into the service, which is reporting to two separate Licensing Committees, that the protocol attached as Appendix A be approved by the Licensing Committee of both Mid Suffolk District Council and Babergh District Council.
- 8.9 Officers will monitor emerging best practice in this area, and any national guidance or developments, and where the Corporate Manager (Licensing) considers it necessary he/she shall provide the Licensing Committee with a further report to suggest revisions to the protocol as mentioned in Appendix A.

**9. Appendices**

| Title  | Location |
|--|----------|
| A: Protocol: Licensing Authority role as a Responsible Authority | Attached |

## **10. Background Documents**

10.1 Licensing Act 2003

10.2 Police and Social Responsibility Act 2011

10.3 Guidance issued by the Secretary of State (as amended June 2014)

PLACE DIRECTORATE

### **AUTHORSHIP:**

Lee Carvell (Corporate Manager - Licensing)

Tel: 01473 825719 email: [lee.carvell@babergh.gov.uk](mailto:lee.carvell@babergh.gov.uk)

David Price (Licensing Officer)

Tel: 01449 724693 email: [david.price@midsuffolk.gov.uk](mailto:david.price@midsuffolk.gov.uk)

**PROTOCOL FOR THE LICENSING AUTHORITY ACTING AS A  
RESPONSIBLE AUTHORITY UNDER THE LICENSING ACT 2003**

- (a) The Corporate Manager (Licensing) has been duly authorised by the Licensing Authorities of Mid Suffolk District Council on **[Date]** and Babergh District Council on **[Date]** to perform the Licensing Authority role as a 'responsible authority' on behalf of Mid Suffolk and Babergh District Councils and this enables in relevant circumstances the raising of relevant representations about applications, or seeking the review of a licence or certificate on issue, when and if considered reasonably necessary on a case-by-case basis.
- (b) Where it is considered inappropriate or otherwise impractical for the Corporate Manager (Licensing) to perform this role in any particular case, which may be:
- (i) for reasons of procedural fairness;
  - (ii) due to local knowledge or premises history;
  - (iii) urgency of the matter with consideration to promotion of the licensing objectives;
  - (iv) conflict of interests; or
  - (v) any other reasonable cause,

the responsible authority role will be performed by the Senior Licensing Officer or an appropriate Licensing Officer from the joint Licensing Team (who has consulted with the Head of Environment and/or a legal representative of the Councils).

- (c) To ensure proper separation of the roles within the Joint Licensing Team, and to safeguard procedural integrity and fairness, the following protocol will be observed at all relevant times:
- (i) Each application or relevant matter shall be assessed on a case-by-case basis and due consideration given as to whether or not it is appropriate to intervene or whether any other party is in a more appropriate position to raise a relevant representation on the substantive issues. It is noted that the statutory guidance issued under Section 182 of the Licensing Act 2003 [as revised June 2014] at paragraph 9.15 states that "*it is reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for that intervention falls within the remit of that other responsible authority*".
  - (ii) Prior to submitting any formal representation to the Licensing Authority, the officer performing the responsible authority role shall co-ordinate with other responsible authorities, where viable, to discuss the relevant issues and establish who is the most appropriate party to act. This will help to avoid any

conflict, duplication or uncertainty. It is also recognised that there may on occasion be representations from more than one responsible authority and relevant to more than one licensing objective. Due to limited resources the Licensing Authority will not normally submit representations that are purely in support of another representation already made by an entitled party. It is only where additional or supplementary comments are considered reasonably necessary in an individual case that the submission of a representation will be considered appropriate to promote the licensing objectives.

- (iii) If any other party in a position to act has failed to do so and the Licensing Authority is aware of relevant grounds and should intervene then it may choose to raise a relevant representation in its capacity as a responsible authority.
- (iv) Any representation will be submitted to the Licensing Team in writing, and within any statutory timeframe applicable, as with any other responsible authority or other person entitled. The officer reviewing the representation in the administrative/case officer role will apply exactly the same criteria and considerations as he/she would do with any other representation.
- (v) Prior to the submission of any formal representation the officer intending to perform the responsible authority role shall, where considered appropriate, contact the applicant or licence holder (or their agent) to raise the relevant issues and assess whether any remedial action, informal mediation or voluntary amendments to the licence or certificate may be viable and thus avoid the need to raise a formal representation or initiation of a review.
- (vi) Where a relevant representation has been made the officer performing the responsible authority role on behalf of the Licensing Authority shall not then participate in the processing of the application, and shall not discuss the merits of the case with the officer(s) performing the case management and administration, reporting or committee support role for the Licensing Authority, nor shall the relevant officer making the representation contact/correspond with a member of the Licensing Committee with regard to the application in question. It is noted that the statutory guidance issued under section 182 of the Licensing Act 2003 [as revised June 2014] at paragraph 9.17 states that “*it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest*” and at 9.18 “*the officer advising the licensing committee...must be a different individual to the officer who is acting for the responsible authority*”.
- (vii) Where a relevant representation has been made, the officer performing the responsible authority role must engage with the Licensing Authority in the capacity of a responsible authority, and in the same manner as other responsible authorities. It is noted that mediation may take place in appropriate cases and this officer shall engage with that process in the same manner as other responsible authorities.

- (viii) The Licensing Officer performing the responsible authority role shall, when considering the need for any appropriate remedial conditions or measures, act proportionately, reasonably and adopt a targeted approach to promotion of the licensing objectives. In making this assessment this officer shall also give due consideration to the statutory guidance and potential impact of the measures/condition(s) and the need to avoid imposition of any unnecessary financial burden or deterrent to licensable events or venues via imposition of inappropriate/standard conditions. Whilst a recorded history will not be available for new premises the said Licensing Officer's comments will relate to the likely effect of the grant of a licence on promotion of one or more of the licensing objectives.
- (ix) Decisions on whether it is necessary to adjourn a hearing in the public interest, for example to ensure procedural fairness, will be a decision for the relevant members of the Sub-Committee to make on a case-by-case basis.
- (x) It is envisaged that over time this role may evolve in the light of integrated service development, experience and any national/local precedents, case law and guidance. Where considered reasonably necessary proposals will be made for this protocol to be revised accordingly.

September 2014